

Appl. No. 10/741,329
Amdt. Dated 8/9/2004
Reply to Office Action of 5/11/2004

Remarks/Arguments

Applicant would like to thank the examiner for the thorough review of the present application. Claim 8 has been amended to overcome the minor informalities, as helpfully pointed out by the examiner.

The examiner has rejected claims 1-18 under 35 USC § 103(a) as being unpatentable over Lodrick in view of Haskell. It is respectfully submitted that Applicant's independent claims and all associated dependent claims are clearly and patentably distinguish over the prior art, since it is believed that the construction defined in these claims differs essentially and in an unobvious manner from the constructions disclosed in the prior art references. It is respectfully submitted that since none of the references in the combination teaches the distinctive features of Applicant's invention as defined in the independent claims, any hindsight construction produced by this combination would not lead to applicant's invention.

Applicant respectfully submits that a reference should be considered as a whole, and portions arguing against or teaching away from the claimed invention must be considered. See *Bausch & Lomb, Inc. v. Barnes-Hind/Hydrocurve, Inc.*, 796 F.2d 443, 230 USPQ 416 (Fed. Cir. 1986). Neither Haskell nor any prior art of record discloses a "rack including a central portion and a plurality of rings integral therewith and formed about said central portion", as claimed in Applicant's independent claims 1, 8 and 14. Rather, Haskell simply discloses a plurality of rings for receiving umbrellas therethrough (see FIGS. 1-2), wherein Applicant's central portion is not disclosed.

Furthermore, Applicant respectfully submits even if a prior art reference could be modified to form the claimed structure, does not supply a suggestion to do so. "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification." *In re Laskowski*, 871 F.2d 115, 10 USPQ2d 1397 (Fed. Cir. 1989).

The examiner correctly cited Lodrick as disclosing a clamp as claimed in Applicants independent claims. However, the Lodrick clamp also includes a notch therein for receiving and maintaining pool cues in stored positions (see FIG. 1). Therefore, Lodrick teaches away from the claimed invention because it does not need

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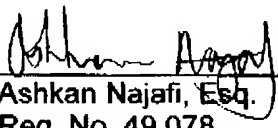
the rack, as claimed by the Applicant. Such a rack would limit Lodrick's ability to store pool cues and would defeat Lodrick's purpose of having a notch in its clamp.

In view of these considerations, it is respectfully submitted that the rejection of the original claims should be considered as no longer tenable with respect to the pending claims and should be withdrawn.

Should the Examiner consider necessary or desirable any formal changes anywhere in the specification, claims and/or drawing, then it is respectfully asked that such changes be made by Examiner's Amendment, if the Examiner feels this would facilitate passage of the case to issuance. Alternatively should the Examiner feel that a personal discussion might be helpful in advancing this case to allowance, he is invited to telephone the undersigned.

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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